IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2006

CORAM

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE D.MURUGESAN
and
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.A.No.4129 of 2004

A.S.Subramani .. Appellant

-Vs-

1. The Deputy Registrar of
Cooperative Societies
Thindivanam Circle, Thindivanam

2. The Special Officer
C.L.S.P.L.130, Nagandur Primary
Agricultural Cooperative Bank
Nagandur, Gingee Taluk
Villupuram District .. Respondents

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Appeal filed under Clause 15 of the Letters Patent, against the order dated 2.11.2004 made in W.P.No.8631 of 2004.

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For Appellant :: Mr.N.A.Nissar Ahmed

For Respondents :: Mr.Raja Kalifulla
Government Pleader for R1
Mr.M.S.Palanisamy for R2

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JUDGMENT

(Judgment of the Court was delivered
by The Hon'ble The Chief Justice)

The correctness of the decision of a Division Bench in *The Special Officer, Vellakovil Primary Agricultural Cooperative Bank, Vellakovil, Erode District v. C.Poongodi, 2004 (5) CTC 299* is the question that is raised in this appeal. The Division Bench in the aforesaid case has held that in view of the mandatory provisions of Section 76(1)(b) of the Tamil Nadu Cooperative Societies Act, 1983, an order of suspension passed by the competent authority or society without specifying the suspension period is not valid.

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2. The factual position is almost undisputed, and needs to be noted in brief.

The appellant was working as a Cashier-cum-Secretary In-charge of the second respondent bank. During his tenure as Clerk-cum-Secretary In-charge, he committed various acts of misappropriation and falsification of accounts, etc., causing huge loss to the second respondent bank. He was placed under suspension by order dated 5.9.2003. A Charge Memo dated 21.2.2004 was also issued to the appellant and an enquiry officer was appointed on 9.3.2004. The appellant challenged the order of suspension dated 5.9.2003 in Writ Petition No.8631 of 2004. The sole basis of the challenge was that since the order of suspension did not prescribe any specific period, as contemplated under Section 76(1)(b) of the Tamil Nadu Cooperative Societies Act, 1983, the order of suspension cannot be sustained. The writ petition was dismissed by the learned single Judge. In the writ appeal, the Division Bench recording its disagreement with the aforesaid decision in *The Special Officer, Vellakovil Primary Agricultural Cooperative Bank, Vellakovil, Erode District v. C.Poongod, (cited supra)* observed that merely because the period of suspension is not specified, it will not make the suspension order invalid. It further observed that as the impugned order of suspension is only suspension pending enquiry, the suspension should last till the enquiry is completed. Consequently, the matter came to be referred to a Larger Bench.

3. We have heard the learned counsel appearing for the parties, and in our opinion, the view taken by the Division Bench in *The Special Officer, Vellakovil Primary Agricultural Cooperative Bank, Vellakovil, Erode District v. C.Poongodi, (cited supra)* is plainly erroneous and unsustainable. At the outset it is necessary to note the distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting. Under the ordinary law of master and servant, the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. However, an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. In such a case, he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld. The suspension in such a case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. (See *R.P.Kapur v. Union of India and another, AIR 1964 SC 787 & V.P.Gindroniya v. State of Madhya Pradesh ands another, AIR 1970 SC 1494).* Therefore, an order of suspension passed by the employer pending enquiry would be perfectly valid, and it cannot be faulted on the ground that the

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period of suspension has not been prescribed in the suspension order.

4. In *The Special Officer, Vellakovil Primary Agricultural Cooperative Bank, Vellakovil, Erode District v. C.Poongodi,(cited supra)* the Division Bench has relied upon the provisions of Section 76(1)(b) of the Tamil Nadu Cooperative Societies Act, 1983 and held that unless the period of suspension is specified, the suspension order would be invalid. Section 76 of the Act empowers the Registrar to direct the suspension of a paid officer or servant of a registered society and provides that where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83, it is brought to the notice of the Registrar that a paid officer or servant of a registered society has committed or has been otherwise responsible for misappropriation, breach of trust or other offences in relation to any registered society or where a complaint of commission of any other offence involving moral turpitude is pending investigation or trial against any paid officer or servant and if in the opinion of the Registrar, the suspension of such paid officer or servant is necessary in the public interest, or in the interest of such society, the Registrar may direct the competent authority under which the paid officer or servant is employed pending such investigation, trial and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date or for such period as may be specified by him. Sub-section (2) of Section 76 provides that on receipt of a direction from the Registrar under sub-section (1), the competent authority or the registered society, as the case may be, is obliged to place or caused to be placed the paid officer or servant under suspension forthwith, notwithstanding any provision to the contrary in the rules or the by-laws of the society. Sub-section (3) of Section 76 empowers the Registrar to direct the competent authority or the registered society, as the case may be, to extend or cause to be extended from time to time the period of suspension and the paid officer or servant suspended shall not be reinstated except with the previous sanction of the Registrar.

5. Section 76 of the Act deals with the power of the Registrar to place the paid officer or servant under suspension. The power of the society to place its employee under suspension is found in the by-laws framed by the society. Rule 149 enables the society to frame special by-laws with the prior approval of the Registrar covering the service conditions of its employees. In the present case, the second respondent bank has framed by-laws prescribing the service conditions of its employees and the by-laws contain a provision for placing an employee of the bank under suspension pending disciplinary proceedings initiated against him. In the instant case, the appellant has been placed under suspension in exercise of the power conferred under the relevant by-laws, which does not prescribe the period of suspension. It merely states that such suspension shall not exceed more than one year. The provisions of Section 76 have no application whatsoever to the suspension of an employee under the by-laws. The Division Bench was clearly in

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error in holding that when the order of suspension is made by the society such order should mention the specific period during which the officer or servant was placed under suspension.

6. In *Government of A.P v. V.Sivaraman, (199) II LLJ 386)* the Supreme Court has held that the Government instructions which provides for review of the order of suspension within six months do not have any statutory force. The order of suspension after a period of six months would not become non est giving an automatic right to reinstatement in service. There is no provision of law conferring such right on a Government servant who has been placed under suspension pending enquiry of a case against him. Where the rules provide for suspending a civil servant and require thereof to report the matter to the Government giving out reasons for not completing the investigation or enquiry within six months, it would be for the Government to review the case, but it does not mean that the suspension beyond six months becomes automatically invalid or non est. The only duty enjoined by such a rule is that the officer who had made the order of suspension must make a report to the Government and it would be for the Government to review the facts and circumstances of the case to make proper order. It is open to the Government to make an order revoking the order of suspension or further continuing the suspension. The order of suspension, however, continues until it is revoked in accordance with law.

7. In yet another decision in *Union of India v. Rajiv Kumar (2003 (6) SCC 516)*, the Supreme Court considered the effect of deemed suspension under Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for custodial detention exceeding 48 hours. The Delhi High Court quashed the suspension order and held that an order of suspension after release of the Government servant on bail could have been passed only under Rule 10(1) and not under Rule 10(2). It further held that a combined reading of Rules 10(1), 10(2), 10(3), 10(4) and 10(5)(a) makes the position clear that the order of suspension was effective for the period of detention only and not beyond it where by legal fiction a person is deemed to be under suspension for remaining in custody for a period exceeding 48 hours. Allowing the appeal, the Supreme Court held as follows:-

> "*Rule 10(2) is a deeming provision and creates a legal fiction. An actual order of suspension is not required to be passed thereunder. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of a court of law or an order passed by the appellate or reviewing authority and the natural consequences*

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*inevitably flowing from such orders. The respondent's plea based on the absence of the expression "until further orders" in Rule 10(2) is without any substance because of Rules 10(5)(a) and 10(5)(c). The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Rule 10(2). Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, it specifically encompasses an order under Rule 10(2). Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large."*

8. On a plain reading of Section 76 (1) (b) it is clearly seen that an order of suspension passed by the Registrar cannot be questioned on the ground that the order does not specify the period for which the suspension is made. The Registrar would be within his power to direct suspension of an employee pending any investigation, trial and disposal of the matter, and on receipt of direction from the Registrar under sub-section (1), the competent authority or the registered society, as the case may be, shall be bound to place the paid officer or servant under suspension forthwith irrespective of any provision to the contrary in the rules or the by-laws of the society. Only when the period is specified, he may extend the same under sub-section (3) of Section 76. Even if the period is not extended, the suspension will not come to an end automatically and the suspended employee cannot be reinstated except with the prior permission of the Registrar.

9. In the result, we hold that the Division Bench decision in *The Special Officer, Vellakovil Primary Agricultural Cooperative Bank, Vellakovil, Erode District* (cited supra) does not lay down the correct law. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, W.A.M.P.No.7784 of 2004 is also dismissed.

Ss/pv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Deputy Registrar of
   Cooperative Societies
   Thindivanam Circle
   Thindivanam

2. The Special Officer
   C.L.S.P.L.130, Nagandur Primary
   Agricultural Cooperative Bank
   Nagandur, Gingee Taluk
   Villupuram District

1 cc to mr.N.A.Nissar Ahamed, Advocate, SR.33289
1 cc to mr.M.S.Palanisamy, Advocate, SR.33151

hpr (co)

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W.A.No.4129 of 2004

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